

**BEFORE THE STATE CORPORATION COMMISSION'
OF THE STATE OF KANSAS**

Before Commissioners: John Wine, chair
 Susan M. Seltsam
 Cynthia L. Claus

In the Matter of a General Investigation into) IntraLATA Toll Dialing Parity Cost Recovery,) PIC Change Charge and Other Issues.)	Docket No.98-GIMT-712-GIT
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ORDER OPENING DOCKET TO ADDRESS GENERIC COST
RECOVERY ISSUES, ASSESSING COST AND REQUIRING
FILING OF INTRALATA TOLL DIALING PARITY PLANS.

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) on its own motion. Being fully advised in the premises and familiar with its files and records, the Commission finds and concludes as follows:

1. In Docket No. 190,492-U, the Commission issued an order on August 17, 1994, establishing an intraLATA presubscription task force and charged it with investigation of the most effective ways to transition to and implement 1+, Ch intraLATA toll dialing parity. The Task Force included representatives of local exchange companies and interexchange carriers. The Task Force reached agreement on several issues and filed a report with the Commission on June 1, 1995. The Task Force reached agreement that there would be no intraLATA presubscription balloting if interLATA balloting had already taken place, in order to avoid customer confusion. The majority of the Task Force recommended that intraLATA toll dialing parity implementation costs be borne by all providers of intraLATA toll traffic, including local exchange companies. Southwestern Bell Telephone Company (SWBT) recommended that only intraLATA toll providers, other than local exchange companies, be required to bear the costs. The Task Force, except for SWBT, agreed that costs be recovered on the basis of originating intrastate access

minutes, through a new intrastate access rate element. SWBT recommended using the same method for recovery as used for interLATA dialing parity implementation, a per equal access trunk monthly charge. The Task Force further recommended that local exchange companies providing intraLATA toll service continue to do so after implementation and that IXC's that provide interLATA service in an office be required to also provide intraLATA service in the same office. MCI recommended that intraLATA participation be voluntary on an exchange by exchange basis. Issues on which there was no agreement were: Should there be a carrier of last resort? If so which carrier should have that responsibility? How should calls in which SWBT and United do not participate in the connection of the call be handled? Should there be changes in the application of access charges?

2. On February 8, 1996, the Federal Telecommunications Act of 1996 became law. It addressed implementation of intraLATA toll dialing parity. 47 U.S.C. § 251 (b)(3) states that local exchange carriers have the duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, . . . with no unreasonable dialing delays.

3. 47 U.S.C. § 271(e)(2)(A) requires a Bell operating company to provide intraLATA toll dialing parity throughout any state for which it has received authority to provide interLATA services coincident with the provision of those services. K.S.A. 1997 Supp. 66-2003(f) of the State Telecommunications Act of 1996 (State Act) states:

The commission shall require, consistent with the terms of the federal act, that intraLATA dialing parity be provided by all local exchange carriers and telecommunications carriers coincidentally with the provision of in-region interLATA services in the state by local exchange carriers with more than 150,000 access lines or their affiliates.

4. On June 27, 1996, the Commission issued an order in Docket No. 190,492-U requesting comments on certain unresolved issues from the first Report and broadening

the request to include ‘all issues which require resolution prior to implementation of intraLATA dialing parity.’ (Order at ¶ 10). A second report was filed with the Commission on September 13, 1996. That report demonstrates the Task Force analyzed the Federal Act and its dialing parity requirements. It also gave consideration to the FCC’s *Second Report and Order and Memorandum Opinion and Order*, CC Docket No. 96-98, issued August 8, 1996, which established dialing parity requirements, including implementation dates. That order was appealed to the Eighth Circuit which invalidated the FCC’s dialing parity rules for intraLATA telecommunications service. *The People of the State of California et al. v. Federal Communications Commission et al.*¹ 24 F.3d, 934 (1997). Thus the Commission is guided only by the Federal and State Acts.

5. In the second report the Task Force reported agreement on the following issues:

- a. IntraLATA dialing parity conversion costs should be eligible for recovery.
- b. Local exchange companies should file tariffs including cost identification and support for cost recovery.
- c. Local exchange companies may propose a cost recovery charge consistent with the FCC’s rules. A flat-rated or usage-based charge may be proposed and may be amortized over a maximum period of 8 years.
- d. The parties reserved their rights to address waivers on an individual case basis.
- e. The Task Force recommended creation of an industry implementation committee to address details which may arise during conversion. The following issues were listed:
 - handling of customer orders
 - IXC conversion list handling
 - business office procedures
 - PIC change billing
 - other.

Some issues were listed as unresolved. One centered on provision of Internet access on a 1+ basis, mandated for the local exchange companies by the State Act, but not required of the IXC's. Should local exchange company minutes associated with this access be excluded from intraLATA dialing parity cost recovery calculations? The parties also recommended the Commission seek legal interpretation of the intraLATA dialing parity requirements of the Federal Act, the FCC's Second Report and Order and the State Act.

6. SWBT and the United Telephone Companies (United) have filed intraLATA toll dialing parity plans. United's plan was approved in 97-UTDT-691-TAR. United implemented intraLATA toll dialing parity on January 1, 1998, pursuant to an order in that docket. In Docket No. 98-UTDT-208-TAR United sought recovery of its intraLATA toll dialing parity implementation costs. United proposed to recover the implementation costs by a surcharge on its originating access charge minutes over a three year period. The Commission approved this cost recovery on an interim basis, subject to modification in this generic docket, by an order issued May 1, 1998. SWBT sought approval of its intraLATA toll dialing parity plan in Docket No. 98-SWBT-482-MIS. In its application SWBT stated it expected to participate in the generic docket for determination of cost recovery. SWBT also did not propose a Primary Interexchange Carrier (PIC) charge, but stated one would not be assessed in the first six month after implementation of intraLATA toll dialing parity. The Commission issued an order approving SWBT's intraLATA toll dialing parity plan on May 8, 1998.

7. The Commission finds and concludes that all independent local exchange companies and all competitive local exchange carriers must file plans for implementation of intraLATA toll dialing parity with the Commission. These plans shall be filed no later than August 3, 1998, in order to assure that the statutory requirements for implementation

of intraLATA toll dialing parity can be met.

8. SWBT and United filed their plans in accordance with the Task Force Report, to the extent the Task Force reached agreement on the particular issue. The Commission finds it is reasonable to rely on the recommendations on which the industry achieved consensus for implementation of intraLATA dialing parity. The Commission has approved the plans of SWBT and United but notes they could be modified based on determinations in this docket.

9. The Commission finds it is appropriate to address all unresolved dialing parity implementation issues in this docket. The most significant among those issues is cost recovery. Addressing these issues in a generic docket will assure that all companies recover their costs in an equitable and nondiscriminatory manner. The Commission therefore requires all local exchange companies that seek recovery of intraLATA dialing parity costs to file requests detailing the costs, by category, which they have incurred or expect to incur for implementation of intraLATA toll dialing parity. Each company is required to specify the amount of cost recovery it seeks. If deemed necessary, specific costs may be submitted subject to confidential treatment. Comments must also address the method of cost recovery each party prefers. The period over which each company proposes to achieve cost recovery should be specified. United, for example, proposed to recover its costs over a three year period. Each party should state with specificity, the amount per minute, per access line, per customer, or, however the particular party proposes to recover its intraLATA toll dialing party costs.

10. Although the FCC requirements for cost recovery of intraLATA dialing parity costs have been vacated, the Commission finds it instructive to consider the FCC's opinion in this respect. The FCC determined that local exchange companies should be

able to recover the incremental costs of dialing parity-specific switch software, any necessary hardware and signalling system upgrades, and consumer education costs that are strictly necessary to implement dialing parity. The FCC believed these costs should be recovered from all providers of telephone exchange service and telephone toll service in the area served by the local exchange company, including that local exchange company, using a competitively-neutral allocator established by the state. *Second Report and Order*, ¶¶ 92-95

11. Dialing parity plans, cost recovery requests and comments shall include justification for the need for recovery of each category of cost, the amount of cost by category, a statement as to how costs were identified by category, and whether the company seeks capital cost recovery. Cost recovery requests shall also identify the amount of labor, if any, embedded in the request.

12. Each party shall also recommend a PIC change charge to be applicable in Kansas. The amount must be specified and a justification provided for the particular amount.

13. All issues related to intraLATA dialing parity, whether raised in the Task Force Reports or not, which the parties deem need to be considered on a generic basis, must be addressed in the filing of plans, requests, comments, etc.

14. Cost recovery requests shall be submitted no later than August 3, 1998. Reply comments may be submitted no later than September 1, 1998.

15. Pursuant to the requirements of the State Act, K.S.A. 1997 Supp. 66-2003(f) all rural local exchange companies and all competitive local exchange companies must implement intraLATA toll dialing parity coincident with SWBT's beginning of provision of in-region interLATA service. 47 U.S.C. § 251 (f)(2) allows local exchange carriers with

fewer than 2 percent of the nation's subscriber lines to petition the appropriate state commission for suspension or modification of the dialing parity requirement if they meet certain criteria. The Commission requests a legal analysis whether the State Act requirement that all local exchange companies including competitive local exchange companies, must implement intraLATA toll dialing parity coincident with provision of in-region interLATA service by SWBT, precludes it from granting suspension or modification of this requirement.

16. All future applications for certification as a competitive local exchange company should contain plans for provision of intraLATA toll dialing parity. Applications already on file may be supplemented by intraLATA toll dialing parity plans, or the applicants may file their plans no later than August 3, 1998. Until the Commission determines whether it has authority to grant waivers of intraLATA toll dialing parity implementation such applications may state intent to seek waiver, if the Commission decides it has authority to consider waiver applications.

17. All certificated providers of local exchange service, including competitive providers shall be considered parties to this docket. Any other entity with an interest in this docket shall file an entry of appearance to be considered a party.

18. The Commission finds it will incur costs in conducting this investigation. It will need to rely on the work of its attorneys, accountants, auditors and engineers for completion of this docket. The Commission finds that implementation of intraLATA toll dialing parity will benefit the entire telecommunications industry and that all certificated providers of telecommunications services shall be assessed for the costs of this docket pursuant to K.S.A. 66-1502.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

- 1. All certificated local exchange companies shall file intraLATA dialing parity implementation plans by August 3, 1998, unless they have already done so.**
- 2. Parties are requested to file a legal analysis of the Commission's authority to grant waivers by August 3, 1998.**
- 3. All companies seeking cost recovery shall identify their costs for intraLATA dialing parity implementation as specified above and provide justification for the-requested recovery by August 3, 1998.**
- 4. Filings shall address the PIC change charge.**
- 5. All other issues relevant to intraLATA dialing panty must be addressed.**
- 6. Reply comments may be filed no later than September 1, 1998.**
- 7. Local exchange companies, including competitive local exchange companies, shall be considered parties to this docket. All other entities wishing to participate in the docket shall file an entry of appearance. All substantive orders will be sewed on all certificated providers of telecommunications services in Kansas.**
- 8. Cost shall be assessed to all certificated providers of telecommunications services in Kansas.**

Any party may file a petition for reconsideration of this Order within fiieen (15) days of the date this Order is served. If service is by mail, service is complete upon mailing and three (3) days may be added to the above time frame.

The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary and proper.

BY THE COMMISSION **IT** IS SO ORDERED.

Wine, Chr.; Seltsam, Corn.; Claus, Corn.

Dated:

~~MAY 15 1998~~

ORDERMAILED

MAY 15 1998



Executive
Director

David J. Heinemann
Executive Director

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